

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling

MARK McEVOY, et al.,

Plaintiffs,

v.

Civil Action No. 5:22-CV-171
Judge Bailey

**DIVERSIFIED ENERGY COMPANY PLC,
et al.,**

Defendants.

ORDER

Pending before this Court are a Motion to Strike Common Law Class Allegations by Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty [Doc. 416], Plaintiffs' Motion to Summarily Deny Defendant-Intervenors' Improper Successive Rule 12 Motion, or, in the Alternative, to Alter the Briefing Scheduling [Doc. 421], and an Amended Plaintiffs' Motion to Summarily Deny Defendant-Intervenors' Improper Successive Rule 12 Motion, or, in the Alternative, to Alter the Briefing Schedule [Doc. 422].

In the Motion to Strike [Doc. 416], Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty (hereinafter "Intervening Defendants") requests this Court to strike the Common Law Class allegations because proceeding with the common law tort claims as a class action will inevitably result in harm to the Intervening Defendants and mineral owners or other property owners like the Intervening Defendants. The Intervening Defendants state that the plaintiffs "cannot carry their burden of showing that the Common

Law Class is ascertainable or that their claims are typical of the Common Law Class."

[Doc. 416 at 1].

In the Motion to Summarily Deny Defendant-Intervenors' Improper Successive Rule 12 Motion [Doc. 422], plaintiffs argue that this Court "should not authorize this Rule 12(g)(2) violation, and should summarily deny the motion to strike under its inherent power to control the progression of cases before it." [Doc. 422 at 1].

The Intervening Defendants appear to ask this Court to decide the ascertainability issue in the above-styled case. At the current posture of this case, this Court finds that deciding the ascertainability issue now as opposed to the appropriate time—i.e., Class Certification Motions—is premature and this Court declines to make such a decision.

The Motion to Strike Common Law Class Allegations by Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty [Doc. 416] is **DENIED AS PREMATURE**. Plaintiffs' Motion to Summarily Deny Defendant-Intervenors' Improper Successive Rule 12 Motion, or, in the Alternative, to Alter the Briefing Scheduling [Doc. 421] and an Amended Plaintiffs' Motion to Summarily Deny Defendant-Intervenors' Improper Successive Rule 12 Motion, or, in the Alternative, to Alter the Briefing Schedule [Doc. 422] are **DENIED AS MOOT**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: October 31, 2023.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE